

FILED

MAY 27 2005

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

CHARLES A. BROWN,

CIV 04-3010

Petitioner,

-VS-

ORDER AND OPINION DENYING
CERTIFICATE OF APPEALABILITY

UNITED STATES OF AMERICA.

Respondent.

TO THE EIGHTH CIRCUIT COURT OF APPEALS:

Petitioner Charles A. Brown filed a motion to vacate, set aside, or correct his conviction and sentence. I summarily dismissed a portion of the petition upon initial consideration due to procedural default. Petitioner was allowed to supplement his motion as to his ineffective assistance of counsel claim. Following supplementation, initial review was conducted on that claim. I summarily dismissed his ineffective assistance of counsel claim, finding that none of counsel's alleged deficiencies demonstrated that his guilty plea was not voluntary or intelligent.

Pursuant to 28 U.S.C. § 2253, a certificate of appealability may issue only if the applicant has made a substantial showing of the denial of a constitutional right. Petitioner did not and has not made a substantial showing of the denial of a constitutional right.

IT IS HEREBY CERTIFIED that there does not exist probable cause of an appealable issue with respect to the Court's order denying petitioner's motion to vacate, set aside or correct his sentence.

Dated this 27th day of May, 2005.

BY THE COURT:

Charles B. Kornmann
CHARLES B. KORNMANN
United States District Judge

ATTEST:

JOSEPH HAAS, CLERK
BY: *John Haas*

(SEAF)